IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8360 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF HAJI ISMAIL ABDUL RAHEMAN DADI

Versus

RAMSING MOTIBHAI BARIA

Appearance:

MR AJ PATEL for Petitioners

MR AR MAJMUDAR for Respondents Nos. 1-2

MR KT DAVE, AGP for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/02/2002

ORAL JUDGEMENT

#. Heard the learned advocates.

#. The petitioners before this Court are the heirs

of one Haji Ismail Abdul Raheman Dadi. The said Haji Ismail Abdul Raheman purchased a piece of agricultural land admeasuring 391.01 sq.yards of land Survey No.77/1 of Village Piplod, Taluka Devgadh Baria, District Panchmahals from one Jesangbhai Motibhai, the father of the respondents nos.1 and 2 herein. The said sale being in contravention of the provisions contained in the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as 'the Fragmentation Act') was called in question by the Deputy Collector, Dahod. The Deputy Collector, Dahod, under his order dated 30th November, 1972, held that the sale in question was in contravention of Section 8 of the Fragmentation Act. However, in the event the possession of the said fragment was ordered to be restored to the vendor, the vendee would suffer an irreparable loss and grave hardship. He, therefore, ordered that in accordance with Section 9(1) of the Fragmentation Act, the sale in question was void. The name of the purchaser be entered in the Village Forms Nos.7 and 12 and in the column of 'other rights' and the purchaser be permitted to retain the unauthorized possession. Since then, the said Haji Ismail Abdul Raheman purchased two more pieces of land of the said Survey No.77/1 admeasuring 250.05 sq. yards and 1835.75 sq. yards respectively. The said transfers were entered in the revenue records also. On the death of the said Haji Ismail Abdul Raheman, the said pieces of land devolved upon the present petitioners and mutation entries in the revenue records were also made accordingly.

The brother of the vendor Jesangbhai Motibhai i.e. one Ramsing Motibhai, the respondent no.1 herein challenged the said sale before the Civil Judge (J.D.), Devgadh Baria in Regular Civil Suit No.31/1972. The said Suit and the Civil Appeal No.10/1975 arising therefrom were dismissed by the learned Civil Judge (J.D.), Devgadh Baria and the learned District Judge, Panchmahals, respectively. Another suit being Special Civil Suit No.149/1985 instituted in the Court of Civil Judge (S.D.), Godhra in the same subject matter was withdrawn by the said plaintiff (i.e. the respondent no.1 herein) on 8th May, 1986. Thereafter, the present respondents, the brothers of the vendor Jesangbhai Motibhai challenged the concerned revenue entries in Appeal Nos.91/1986 and 3/1988 before the Assistant Collector, Dahod. The Assistant Collector, Dahod, under his order dated 10th October, 1988 dismissed the said Appeals. However, directed the Mamlatdar, Devgadh Baria to initiate proceedings against the petitioners for the said sales being in contravention of Section 63 of the Bombay

Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as 'the Tenancy Act'). Feeling aggrieved, the petitioners preferred Appeal No.85/1990 before the District Collector, Panchmahals, which was dismissed on 19th March, 1990. The challenge to the said order dated 19th March, 1990 before the State Government has also failed i.e. the Revision Application No.20/1990 preferred before the State Government has been dismissed on 27th August, 1990. Therefore, the present petition.

Mr.Patel has submitted that the orders made by the authorities below are patently wrong, inasmuch as, while considering the mutation entries in RTS proceedings under the Bombay Land Revenue Code, 1879 (hereinafter referred to as 'the Code'), the said authorities have ventured into the arena of the Tenancy Act. He has further submitted that even if the same officer is empowered to act under both the Acts i.e. the Tenancy Act and the Code, while considering a matter arising under the Bombay Land Revenue Code, such officer is not authorized to act under the Tenancy Act as well. In support of this argument, Mr.Patel has relied upon the judgment of this Court in the matter of EVERGREEN APARTMENT COOPERATIVE HOUSING SOCIETY v. SPECIAL SECRETARY, REVENUE DEPARTMENT, GUJARAT STATE [1991(1) GLR 113]. In the said judgment, this Court has held that, "it is quite possible that an Officer of the Revenue Department may be occupying different capacities under different enactments. That, however, would not empower him to exercise any power under one enactment while proceeding under another enactment.... Independently, the Revenue Authorities, as mentioned in Rule 108 of the Rules, can not pass orders of cancelling the entries on an assumption that the transaction recorded in the entry are against the provisions of a particular enactment. Whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed."

#. In above view of the matter, I am of the opinion that the present petition is wholly misconceived. What was the subject matter of the proceedings was the relevant revenue entries, which in effect have been upheld. However, while doing so, the concerned authority has observed that the transfer in favour of Haji Ismail Abdul Raheman was made in contravention of Sections 63 and 2(6) of the Tenancy Act and the concerned authority (i.e. the Mamlatdar, Devgadh Baria) should initiate the

proceedings for such contravention.

#. Be it noted that it is merely a direction to the concerned authority to initiate proceedings. No such proceedings have been initiated as yet. No cause of action, therefore, can be said to have arisen. In the event such proceedings are initiated by the concerned authority, the petitioners shall have an opportunity of defence, and if any order adverse to the petitioners is made, the same can be challenged further. However, in the present proceedings no order adverse to the petitioners has been made either under the Code or under the Tenancy Act. Since, no order adverse to the petitioners has been made, the above referred judgment shall have no applicability. The petitioners, therefore, are not entitled to the reliefs prayed for.

#. The petition is, therefore, dismissed. Rule is discharged.

(Ms. R.M.Doshit, J.)

/sakkaf